I T Services, Division of I T Corporation *and* Warehouse Processing & Distribution Workers' Union, Local No. 26, International Longshoremen's and Warehousemen's Union. Case 21-CA-19659

September 17, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On February 2, 1982, Administrative Law Judge Richard D. Taplitz issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed cross-exceptions and an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

[1] We agree with the Administrative Law Judge that Respondent had an adequate objective basis to support a good-faith doubt of the Union's majority. Our agreement, however, is predicated on all of the factors on which he relied, including the Union's demand that the replacements be discharged, the statements by replacements that they did not want the Union to represent them, and the violence directed against them. We do not rely on any union conduct after Respondent's withdrawal of recognition as shedding light on the facts available to Respondent at the time it withdrew recognition. Rather, we assign some weight to the strike replacements' awareness during the strike of the Union's demand that they be discharged.

In agreeing with his colleagues, Member Hunter does not necessarily subscribe to all of the legal principles stated by the Administrative Law Judge.

DECISION

STATEMENT OF THE CASE

RICHARD D. TAPLITZ, Administrative Law Judge: This case was heard in Los Angeles, California, on November 5 and 6, 1981. The charge and amended charge were filed respectively on October 21 and 30, 1980, by Warehouse Processing & Distribution Workers' Union, Local No. 26, International Longshoremen's and Warehousemen's Union, herein called the Union. The complaint, which issued on January 29, 1981, alleges that I T Services, Division of I T Corporation, herein called the Company, violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended.

Issues

The primary issues are:

1. Whether the Company's withdrawal of recognition from the Union on October 14, 1980, constituted a violation of Section 8(a)(5) of the Act, or whether the withdrawal was lawful because it was based on the Company's objectively based good-faith doubt that the Union continued to represent a majority of the employees in the bargaining unit after the expiration of a collective-bargaining agreement.

2. If the Company did not have such a good-faith doubt, whether a bargaining order should be denied because of policy grounds. The policy grounds relate to the allegation that the Union had indicated that it would not represent strike replacements fairly and that the Union had engaged in substantial violence during the course of a strike which preceded the withdrawal of recognition.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and the Company. Upon the entire record of the case and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a California corporation engaged in the business of providing heavy industrial cleaning services for oil refineries and other industrial customers in southern California. It operates a facility at 336 Anaheim Street, Wilmington, California. During the past 12 months the Company has provided services valued in excess of $50,000 to Union Oil Company, which annually sells and ships goods and products valued in excess of $50,000 directly to customers located outside of California. The Company is engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Agreed-Upon Facts*[1]

Sometime prior to November 16, 1977, the Company recognized the Union as the exclusive representative of

[1] These facts as well as those set forth above relating to the service of the charge, the Company's commerce data, and the Union's status as a labor organization were agreed to in a "partial stipulation of facts" signed by all parties and received in evidence as Jt. Exh. 1.

its employees in a unit that was appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.[2] On or about November 16, 1977, the Company continued to recognize the Union and a collective-bargaining agreement was entered into which was effective from November 16, 1977, through November 15, 1979.

From November 15, 1979, to October 14, 1980, the Company continued to recognize the Union as the exclusive representative of the employees. At least until October 14, 1980, the Union, by virtue of Section 9(a) of the Act, was recognized as the exclusive representative of the Company's employees in the appropriate unit for the purposes of collective bargaining.

From about October 1979 to September 1980, the Company and the Union met to negotiate a new collective-bargaining agreement to succeed the agreement that had expired by its terms on November 15, 1979.

On or about November 15, 1979, all 54 employees of the Company in the bargaining unit ceased work concertedly and went on strike. During the period of negotiations during the strike the Union, as part of its contract proposals, on December 11, 1979, and on May 29, 1980, demanded that the striking employes be reinstated and that the replacements be terminated. That demand was also included in the Union's written demands in June 1980 and was never withdrawn.

On or about October 13, 1980, the Union, by telegram, made an unconditional offer to return to work on behalf of 44 striking employees. On or about October 14, 1980, the Union, by letter, reiterated its unconditional offer to return to work.

On or about October 14, 1980, the Company, by letter, confirmed receipt of the Union's telegraphic offer and placed 28 of the 44 striking employees on a preferential hiring list. Of the 16 remaining striking employees, 1 had voluntarily quit, 12 had been discharged for cause,[3] and 3 were subsequently reinstated pursuant to a settlement agreement entered into by the parties on January 22, 1981.

On October 14, 1980, the Company had 36 permanent replacements in its employ. None of the original strikers abandoned the strike to return to work for the Company prior to October 14, 1980.

On October 14, 1980, the Company, by letter, withdrew recognition from the Union.

On or about November 19, 1980, the Company, in a letter to the Union, offered to cooperate with the Union to secure an expeditious resolution of the issue of majority status. The Union made no response to the Company's letter, and has never sought an election to determine the issue of majority status.

Since on or about October 14, 1980, and at all times thereafter, the Union has requested, and continues to request, that the Company bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about October 14, 1980, and continuing to date, the Company has refused to recognize and bargain with the Union.

B. *Some Preliminary Legal Considerations*

Upon the expiration of a collective-bargaining agreement, an employer may not withdraw recognition from an incumbent union unless certain circumstances exist. The controlling law is the same as that which has evolved for the withdrawal of recognition after the expiration of a certification year. *Bartenders Association of Pocatello*, 213 NLRB 651 (1974); *Beacon Upholstery Company*, 226 NLRB 1360, 1367 (1976). That law is succinctly set forth in *Pennco, Inc.*, 250 NLRB 716 (1980), supplementing 242 NLRB 467 (1979), where the Board held:

> As stated in our earlier Decision, absent unusual circumstances, a union is irrebuttably presumed to enjoy majority status during the first year following its certification.[2] Upon expiration of the certification year, the presumption of majority status continues but becomes rebuttable.[3] An employer who wishes to withdraw recognition from a certified union after a year may rebut the presumption in one of two ways: (1) by showing that on the date recognition was withdrawn the union did not in fact enjoy majority support, or (2) by presenting evidence of a sufficient objective basis for a reasonable doubt of the union's majority status at the time the employer refused to bargain.[4]

The Company does not contend in its brief, nor has it established by probative evidence, that on the date recognition was withdrawn the Union did not in fact enjoy majority status. It did present substantial evidence in support of its contention that it had an objective basis for a reasonable doubt of the Union's majority status at the time it refused to bargain.[4] The Company has the burden

[2] That bargaining unit was:

All production and maintenance employees employed by the Company in its industrial operation at its facility; excluding all office and clerical employees, guards, watchmen and supervisors as defined in the Act, and all employees covered by collective-bargaining agreements with other labor organizations.

[3] In a subsequent stipulation the parties agreed that nine of the terminations took place more that 6 months prior to any charge being filed and that a charge relating to those nine was dismissed by the Region on that basis.

[2] *Ray Brooks* v. *N.L.R.B.*, 348 U.S. 96, 98–104 (1954).

[3] *J. Ray McDermott & Co., Inc.* v. *N.L.R.B.*, 571 F.2d 850 (5th Cir. 1978), enfg. 233 NLRB 1087 (1978); *N.L.R.B.* v. *Windham Community Memorial Hospital and Hotel Hospital Corporation*, 577 F.2d 805 (2d Cir. 1978), enfg. 230 NLRB 1070 (1977); *N.L.R.B.* v. *Frick Company*, 423 F.2d 1327 (3d Cir. 1970), enfg. 175 NLRB 233 (1969); and *Celanese Corporation of America*, 95 NLRB 664 (1951), cited with approval in *Ray Brooks* v. *N.L.R.B.*, *supra*.

[4] *Retired Persons Pharmacy* v. *N.L.R.B.*, 519 F.2d 486 (2d Cir. 1975), enfg. 210 NLRB 443 (1974); *Allied Industrial Workers, AFL–CIO, Local Union No. 289 [Cavalier Division of Seeburg Corporation]* v. *N.L.R.B.*, 476 F.2d 868 (D.C. Cir. 1973), enfg. 192 NLRB 290 (1971); *Terrell Machine Company* v. *N.L.R.B.*, 427 F.2d 1088 (4th Cir. 1970), enfg. 173 NLRB 1480 (1969).

[4] Such a good-faith doubt defense can be sustained only where the doubt is raised in a context free of unfair labor practices. Here, there is no contention that the Company engaged in any unlawful activity other than the withdrawal of recognition.

of establishing that the withdrawal of recognition was based on an objectively supported good-faith doubt of union majority. As the Board held in *Pennco, Inc., supra* at 717:

> [T]he employer's burden is a heavy one. Thus, "it is insufficient . . . that the employer merely intuits nonsupport,"[7] and good-faith doubt "may not depend solely on unfounded speculation or a subjective state of mind."[8]

[7] *J. Ray McDermott and Co., Inc.* v. *N.L.R.B., supra* at 859.
[8] *N.L.R.B.* v. *Gulfmont Hotel Company*, 362 F.2d 588 (5th Cir. 1966), enfg. 147 NLRB 997 (1964).

C. *The "Good-Faith Doubt" Contention*

1. Background

The Company contends that at the time it withdrew recognition from the Union on October 14, 1980, it had an objectively based good-faith doubt that the Union represented a majority of the employees in the appropriate bargaining unit. The Company's operations manager, Ronald Alasin,[5] was the person who made the decision to withdraw recognition from the Union. The considerations upon which Alasin made his decision to withdraw recognition are therefore of critical importance. Alasin asserts that he had good reason to believe that none of the strike replacements desired representation by the Union on October 14, 1980, and as of that date the strike replacements constituted a majority of the employee complement in the bargaining unit. The parties are in agreement with regard to the number of strike replacements and the total number of employees. As of the critical date, October 14, 1980, the employee complement consisted of 36 permanent replacements and 31 employees who had been on strike.[6] As the permanent replacements constituted a majority of the employees in the unit, if the Company did have an objectively based good-faith doubt that the strike replacements did not desire representation by the Union, the Company would have a good defense to the allegation that it unlawfully withdrew recognition.

2. The Union's demand that the replacements be discharged

As is set forth below, the Union, at all times material herein, demanded that the strike replacements be terminated. The strike replacements knew of that demand and Alasin was aware that the employees knew of it. Alasin contends in substance that he could reasonably assume that the strike replacements did not want to be represented by a union that was demanding their termination.

The strike began on November 15, 1979. On December 11, 1979, and on May 29, 1980, as part of its contract proposals, the Union demanded that the striking employees be reinstated and that the replacements be terminated. That demand was also included in the Union's written demands in June 1980 and was never withdrawn.

Events that occurred after the withdrawal of recognition on October 14 cannot be used to show Alasin's state of mind on the critical date. However, subsequent events can shed light on the true meaning of events which occurred before the critical date. Though the parties have stipulated and I have found that the Union, prior to October 14, demanded the termination of the replacements and that the demand had not been withdrawn, an argument could conceivably be raised that the demand was simply a bargaining tactic that would have no vitality after the end of the strike. Situations can arise where the hostility between strikers and replacements that is present during a bitter strike can be ameliorated when the strike ends. It is possible at the conclusion of a strike for a union to accept the situation and fairly represent both returned strikers and permanent replacements. That was not the situation in the instant case. On November 13, 1980, which was a month after the end of the strike, the Union wrote to the Company saying: "In regard to the Union demands that all permanent replacements be terminated, we have never received a definite response from the Company whatever on that question, and we would ask you for your position in that matter." The Union's demand was not just a demand that room be made for the strikers.[7] There was room for the strikers even if no replacements were let go. Within a few weeks of October 14, 1980, there was enough work available for all of the strikers to return. Only 12 or 15 of the 28 strikers who had been put on the preferential hiring list were willing to return to work. By reraising the issue of discharging the replacements on November 13, 1980, the Union was seeking to punish the replacements rather than to help the strikers.

As of October 14 Alasin believed that the Union was serious in its demand that the replacements be terminated. He had substantial grounds for that assumption. It is reasonable to believe that the replacements also took the matter seriously. They knew of the Union's demands because they were kept up to date with all union demands at regularly scheduled company meetings. They were also aware of the demands because throughout the strike pickets kept telling the replacements that the replacements would not be working there very long.[8] A

[5] It was stipulated and I find that Alasin was a supervisor and agent of the Company within the meaning of the Act.
[6] Twenty-eight striking employees had been put on a preferential hiring list as of that date and three more were subseqently reinstated pursuant to a settlement agreement. The three who were subsequently reinstated must be considered employees as of the critical date.
[7] The Union's demand was that the permanent replacements be terminated rather than that the strikers have seniority or other preference for the jobs. If such a preference had been granted and if some replacements had to be laid off to make room for strikers, the laid-off replacements could have had recall rights when additional work became available.
[8] Employee Charleton Noble credibly testified that toward the end of the strike picketing strikers asked him to sign a union card and to unite. In Noble's words:

> See, they made my mind up a long way before the strike was even over, because see, like sometime they threatened me, or family. You know. My old lady and my kid. Or they, like, surround me. They kicked me. Tell me I'm on my way out. And "you little S.O.B." and all they said. And, "Soon as we win, you know, ya'll going to be out."
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> And, you know, first they talked like, you know, they didn't want us. Then, at the end, they seemed like they wanted us to join them. But everybody's mind was made up, you know. We didn't want no part of them, you know.

Continued

number of employees told supervisors about their concern with the Union's demand.

Under controlling Board law strike replacements are presumed to support an incumbent union in the same ratio as the employees they replace. Though that presumption is rebuttable, it cannot be rebutted merely by showing that strike replacements crossed a union picket line. *Pennco, Inc., supra* at 717.[9]

In *Beacon Upholstery Company*, 226 NLRB 1360 (1976), the Board found in effect that the presumption, that strike replacements desired representation in the same proportion as the other employees, had been rebutted. That case was somewhat unique on its facts because all of the striking employees had been lawfully discharged. In the instant case only some of the striking employees were lawfully discharged. However, the *Beacon* case, as does the instant one, involves a situation where there was an extreme conflict of interest between the strikers and the replacements. The Board adopted the decision of the Administrative Law Judge which held (at 1368):

> Here the refusal to bargain occurred when there were no employees on strike. All of those employees had been lawfully discharged. The Union had been bargaining agent for those discharged employees and there can be no question that the Union's loyalty lay with these employees. The interests of the discharged employees were diametrically opposed to those of the strike replacements. If the discharged employees returned to work, the strike replacements would lose their jobs. Respondent was well aware of the situation and a serious argument can be made that Respondent thus had a reasonable basis for doubting that the strike replacements wanted the Union to represent them.

The Union in the instant case went much further than merely seeking reinstatement of striking employees and exstrikers who had been discharged for misconduct during the course of the strike. The Union demanded that all strike replacements be terminated. It would not have mattered whether or not there were enough jobs available for both the strikers and the replacements. Under such circumstances, the presumption that the replacements desired the Union to represent them could only be supported if one were willing to believe that the replacements voluntarily opted for employment suicide in the form of termination. Such an assumption cannot be rationally maintained. I therefore find that the presumption that the replacements desired representation in the same proportion as the other employees has been rebutted and that there was an objective basis for Alasin's good-faith belief that none of the replacements desired representation by the Union. As the replacements constituted a majority of the employee complement on October 14, 1980, the Company did not violate Section 8(a)(5) of the Act by withdrawing recognition from the Union on that date.

3. Reports concerning employee sentiments

While I believe that the matters set forth above in themselves are sufficient to defeat the complaint, there were other circumstances that gave support to the Company's contention that it had an objectively based good-faith doubt that the Union represented a majority of the employees. There was a great deal of testimony concerning reports made to Alasin by supervisors and employees which helped Alasin make his determination with regard to majority status. Much of that testimony had little weight because of the numbers involved. The bargaining unit on October 14 consisted of 67 employees. Of those employees, 31 had been strikers and 36 were replacements. The 31 who had been strikers can be presumed to be union adherents. If only 3 of the replacements had desired the Union to represent them on that date, there would have been 34 employees for the Union and 33 against, and the Union would have represented a majority. Alasin testified that a number of employees told him they did not want the Union. However, that testimony is meaningless as Alasin does not assert that he spoke to all the employees and only three employees could have made the difference. There was also a good deal of testimony concerning reports by supervisors to Alasin concerning statements that the employees had made to the supervisors. Most of that testimony was meaningless for the same reason. However, the testimony of company dispatcher Thomas Lucia substantially supported the Company's claim.[10]

The employees punched in and out just outside of the window of Lucia's office. Lucia had occasion to speak to the employees almost daily while making assignments and assignment changes. When he testified, Lucia went over the list of names of the strike replacements. He credibly averred that at one time or another during the strike each of the strike replacements, with two possible exceptions, told him that they did not want the Union to represent them. The two exceptions were Ollie Dawson who was out of work most of the time on workman's compensation and Gilbert Martinez who only worked

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Threatening me, kicking me, every day. Every day I had to walk through, I was subjected to being kicked, ducking bottles and all this here kind of stuff. Then at the end they say, "We ought to, you know, unite."

The Union's actions "with regard to its continuing demand that the replacements be terminated establishes that the conciliatory gesture toward Noble was mere hypocrisy.

[9] This view has not met with universal approval. As the Eighth Circuit of Appeals held in *National Car Rental System, Inc.* v. *N.L.R.B.*, 594 F.2d 1203, 1206 (1979), denying enforcement of 237 NLRB 172 (1978):

> In *Windham* the Board held that new employees, in a situation such as this, are presumed to support the union in the same ratio as the employees they have replaced. If this presumption were to be employed here, we would reach the ridiculous result of presuming that all of the ten new employees favored representation by the union even though they had crossed the union's picket lines to apply for work and to report to work each day after they were hired. This presumption of the Board is not specifically authorized by statute and is so far from reality in this particular case that it does not deserve further comment.

See also *N.L.R.B.* v. *Randle-Eastern Ambulance Service, Inc.*, 584 F.2d 720, 728 (5th Cir. 1978), denying enforcement in part of 230 NLRB 546 (1977).

[10] It was stipulated and I find that Lucia was a supervisor within the meaning of the Act.

for a short period. Even if those two employees were considered to be union adherents, there would be 34 employees against the Union and 33 for the Union. Lucia also testified that he had a number of conversations with Alasin in which he told Alasin about the conversations he had with the employees. Lucia could not recall the specific time, location, or details of those conversations with the employees and there is some question whether his testimony standing alone would be sufficient to establish an objective basis for a good-faith doubt of majority. However, Lucia's reports to Alasin gave additional confirmation to Alasin that a majority of the employees did not desire union representation. If there were any question concerning the objective basis for Alasin's good-faith belief relating to the "discharge" matters discussed above, Lucia's testimony would give additional weight to Alasin's conclusions.[11]

4. The violence

There was a great deal of picket line violence throughout the course of the strike. That violence was directed against the replacements, the replacements' property, and company property. Alasin knew from his own observation as well as from reports that he received from supervisors, employees, security guards, and the police that the pickets were subjecting the replacements to a wide variety of threats and intimidation on almost a daily basis. The violence was also aired at court proceedings. Alasin testified in substance that the violence directed against the replacements was such as to warrant his conclusion that the replacements did not want to be represented by their tormentors. As is set forth below, I believe that the level of violence was so high as to give a solid basis for Alasin's conclusion. Whether or not the "violence" aspect of the case is in itself sufficient to raise an objectively based good-faith doubt of union majority, it may be considered as one element in evaluating the Company's conduct and it does give additional weight to the Company's position.[12]

In order to put the matter in perspective, some consideration must be given to the nature and extent of violence. While some people when hit on one cheek may be able to turn the other cheek and love their aggressor, it is likely that the love will vary in inverse proportion to the strength of the blow.

The strike lasted from November 15, 1979, to October 13, 1980. During that entire time, the violence and threats directed by the pickets against replacements was ubiquitous.

Alasin credibly testified to the following: Throughout the strike pickets spat on replacements, broke the windows of employees' cars as they entered and left the yard, put nails in the driveways, punctured tires of company and employee cars, and threw beer bottles and rocks at employees and management officials. These events occurred almost on a daily basis. Pickets called the strike replacements "black bastards" and "nigger."[13] The Company paid for the repair of between 100 and 200 tires that had been flattened because of slashes or punctures; it paid for about a dozen incidents of major body repair caused by serious damage to cars when rocks were thrown at them; it paid for the replacement of about 20 car windows. While Union President Joe Ibarra was on the picket line, Alasin saw rocks and bottles being thrown into the company yard, employees stopped and harassed at the gate, and vendor trucks prevented from entering the plant premises. Alasin heard Ibarra tell one truckdriver that, if the driver went in, the driver would be in trouble.[14] Alasin also saw J. J. Romero, who was an admitted picket line captain, involved in violence such as the throwing of rocks and the breaking of windows.

Strike replacement Joe Matthews credibly testified as follows: His back car window was shot out and all four of his brake lines were cut. Pickets put nails under the wheels of a company truck while he was driving it. Pickets told him they were going to get him. They called him a "black nigger" and threw bottles and rocks at him. One bottle landed and broke near him and a picket said, "The next time it going to be a bullet."

Strike replacement Robert Mitchell credibly testified as follows: Pickets spat on his vehicle and threw rocks at it. They prevented his vehicle from being driven off company property. Rocks and bottles were thrown over the company fence and pickets threatened to "enjoy his family" while he was working.

Supervisor Thomas Lucia credibly testified as follows: He heard pickets calling replacements "nigger" and threatening to "kick their black asses." He heard pickets say "we will kill you" and "we're going to get you" to strike replacements. He saw a picket with a trained pit bulldog and heard the picket threaten to sic the dog on a replacement. He saw rocks being thrown into the yard by pickets almost daily. He saw Union President Ibarra on the picket line when some of the misconduct happened and he saw picket captain Oscar Gutierrez throw a bottle over the fence which broke close to a number of employees.

Strike replacement Gerry Norman credibly testified as follows: Pickets kicked in the side of his car while he was in it. They threatened that they would get his daughter or his wife and they spat on his car.

Strike replacement Jerry Henderson credibly testified as follows: Pickets threw a hammer at his car while he was driving it and broke the front glass. He was spat upon, followed to his home, and called "nigger." Pickets frequently threatened to go home to his wife.

Strike replacement Edward Kimble credibly testified that his windshield was cracked with a hammer.

[11] It is also noted that the General Counsel could have put in question the effectiveness of Lucia's testimony by simply producing 1 out of the 34 employees that Lucia spoke to to testify that he did not tell Lucia that he was antiunion. If that one witness had credibly testified to that effect, the argument could have been made that there were 34 employees for the Union and 33 against. No such witness was called.

[12] In *Pennco, supra* at 718, fn. 16, the Board held:

> [I]n view of the speculative nature of the employees' reasons for crossing the picket line, the occurrence of some violence on the picket line is, at best, one factor weakening the presumption of majority status but not alone rebutting it.

[13] Most of the replacements were black while most of the strikers were Mexican-American.

[14] These findings are based on the credited testimony of Alasin. Ibarra was an evasive and unconvincing witness. I do not credit his denials.

Strike replacement Charleton Noble credibly testified as follows: Pickets threatened to harm his wife and child. Pickets surrounded him and kicked him. On almost a daily basis he was threatened and intimidated.

Strike replacement Travis Hunt credibly testified that pickets called him a "black son-of-a-bitch" and placed nails so his tires were punctured. He also averred that bottles were thrown near him.

Supervisor Douglas Wayne credibly testified that Union President Ibarra was present when striker Jimmy Arendain ripped the battery cables from a truck.[15]

Supervisor Michael Powers credibly testified that he saw an employee hit by a beer bottle after which strikers came out from behind a wall and laughed. He credibly averred that Ibarra was there at the time.

In sum, I find that violence and intimidation were pervasive on the picket line throughout the strike. Union picket captains J. J. Romero and Oscar Gutierrez actually participated in some of the unlawful conduct. Union President Ibarra was present when some of the violence occurred. There is no indication that the Union made any effort to prevent the violence or to control the situation. Ibarra testified that during the strike he investigated a number of charges of violence made by the Company and based on his investigations he concluded that there was no basis for discipline. No one was disciplined by the Union. Under these circumstances the Union must be held responsible for the misconduct of the pickets.[16]

5. Conclusion

When Alasin withdrew recognition from the Union on October 14, 1980, he knew that the strike replacements were aware of the fact that the Union was seeking their termination. He rationally assumed that employees did not desire representation from a union that so overtly sought to harm them. At that time the strike replacements constituted a majority of the employees in the bargaining unit. Also as of October 14, 1980, Alasin had received information from Supervisor Lucia concerning the desires of the strike replacements. Lucia had spoken to all but two of the strike replacements and all the people he spoke to told him that they did not desire representation by the Union. A majority of the employees in the bargaining unit gave him that information and he relayed it on to Alasin who made the decision to withdraw recognition. In addition, during the approximately 11 months of the strike, the pickets made massive use of violence, threats, and intimidation in an attempt to achieve their ends. The Union was responsible for that conduct and the employees had good cause to attribute it to the Union. The misconduct was overt and known to both Alasin and the employees. Alasin rationally assumed that employees who were the victims of such unlawful conduct did not desire to make the perpetrator of that conduct their agent for bargaining. Viewing all these factors as a whole, I conclude that when Alasin withdrew recognition from the Union on October 14, 1980, he had a good-faith doubt that the Union represented a majority of the employees in the bargaining unit. I also find that that good-faith doubt was based on objective considerations. As the withdrawal of recognition occurred after the expiration of the collective-bargaining contract and at a time when the Company had a good-faith, objectively based, doubt of the Union's majority status, the Company did not violate Section 8(a)(5) of the Act. I therefore recommend that the complaint be dismissed in its entirety.[17]

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The General Counsel has not established by a preponderance of the credible evidence that the Company violated the Act as alleged in the complaint.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[18]

The complaint is dismissed in its entirety.

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[15] Ibarra testified that he did not see any battery cables being ripped out. I do not credit him.

[16] As the Board held in *United Association of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 195, AFL-CIO (McCormack-Young Corporation)*, 233 NLRB 1087, 1088 (1977):

> It is, of course, well established that "where a union authorizes a picket line, it is required to retain control over the picketing. If a union is unwilling or unable to take the necessary steps to control its pickets, it must bear the responsibility for their misconduct." Similarly, if pickets engage in misconduct in the presence of a union agent, and that agent fails to disavow that conduct and take corrective measures, the union may be held responsible.

[17] In view of this conclusion there is no need to consider the Company's contention that the Union should be ineligible for a bargaining order because the Union's demand for the discharge of the strike replacements indicated that the Union would not represent those employees fairly. There is also no need to consider the Company's contention that the union violence disqualified the Union from being the beneficiary of a Board bargaining order. See *Herbert Bernstein, Alan Bernstein, Laura Bernstein, a copartnership d/b/a Laura Modes Company*, 144 NLRB 1592 (1963).

[18] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.